REV. 542; *Meyer* v. *Metropolis Knitting Mills, Inc.* (1915) 154 N. Y. Supp. 209. It is not material whether the degree of care be described as slight or ordinary, for there is negligence if there is want of such care as the circumstances require. *Bean* v. *Ford* (1909) 65 Misc. 481, 119 N. Y. Supp. 1074. This is a question of fact, and the value, quality and portability of the chattel bailed should be considered. Since the definitions laid down by the courts appear to indicate that, in the abstract, the standard of care required by a gratuitous bailee is the same as that of a bailee for reward, the assumption of the judge, in the instant case, that there is some inherent difference in the liability of these two classes of bailees seems incorrect. If all the circumstances justified a finding of negligence, the question of whether the bailment for reward had terminated, should have been regarded as immaterial.

BANKS AND BANKING—SALE OF FOREIGN EXCHANGE—DEPOSIT OF PAYMENT.—The plaintiff gave an order to A & Co., bankers, to cable 18,000 lire to Naples. A & Co. sent him a memorandum that he had "bought of A & Co. . . . cable transfer to Italy . . . lire 18,000 @ 5.19⅞ . . . Payments required in cash or certified checks; otherwise, order, if accepted, will be executed after collection of checks." The plaintiff gave A & Co. his certified check, which was deposited in the defendant bank. A & Co. failed the next day without having cabled the transfer. The bank had not put the check through the clearing-house before the failure. *Held,* the plaintiff would have to come in as a general creditor with respect to the proceeds of the check in the hands of the defendant. *Legniti* v. *Mechanics & Metals National Bank* (N. Y. Ct. of App. March 1, 1921) not yet reported.

The Appellate Division of the Supreme Court had decided that a constructive trust arose in favor of the plaintiff. (1919) 186 App. Div. 105, 173 N. Y. Supp. 814. This result was criticised in (1919) 19 COLUMBIA LAW REV. 322, in which it was pointed out that the needs of the business community demanded that the court construe the relationship as that of debtor and creditor, not of fiduciary. The Court of Appeals has now taken this point of view.

DEEDS—DELIVERY—ESCROWS.—The plaintiff executed a deed of certain real property, complete and unconditional on its face, and gave manual possession thereof to the grantee. At the same time the parties orally agreed that the grantee should return the deed to the grantor when the latter married her and that it should become effective only in case of his failure to do so. The marriage agreement was accordingly performed; but before that event a third party wrongfully caused the deed to be recorded. The wife died, leaving the defendants as her heirs. The plaintiff claimed that this deed was a cloud on his title and asked its removal. *Held,* it was a cloud because there was no delivery of the deed, for "A deed takes effect from delivery and to constitute a valid delivery, it must clearly appear that it was the intention that the deed should pass title at the time." *Mitchell* v. *Clem* (Ill. 1920) 128 N. E. 815.

If the court's test of delivery were a true one, such a thing as delivery in escrow to a stranger would be an impossibility. It is not essential to the validity of a deed delivered in escrow that there be a redelivery after the happening of the condition. *Conneau* v. *Geis* (1887) 73 Cal. 176, 14 Pac. 580; see *White Star Line etc.* v. *Moragne* (1890) 91 Ala. 610, 611, 8 So. 867. That being so, since "delivery" is essential to the validity of a sealed instrument, 1 Williston, *Contracts* (1920) 420, delivery to a stranger in escrow must be a delivery although the parties do not intend to pass title at the time. It is necessary only that the grantor have the present intention to extinguish his rights, privileges, *etc.* in the land and to create similar legal attributes in the grantee either at once or upon the occur-

rence of a contingency and that the grantee intend to have such rights, privileges, *etc.* created in his favor. *Rodmeier* v. *Brown* (1897) 169 Ill. 347, 48 N. E. 468; *Conneau* v. *Geis, supra.* In the instant case, there was a valid delivery in escrow to the grantee but under the prevailing rule the law attaches to such a delivery the consequence that title vests at once. *Dorr* v. *Midelburg* (1909) 65 W. Va. 778, 65 S. W. 97. However, it may be questioned whether or not there is sufficient reason for attaching that consequence; and the conclusion reached in the instant case seems to be a commendable departure from the rigorous rule based upon the fear of fraud and the sanctity of real property.

EQUITY—QUIETING TITLE—LACHES.—The holder of a tax deed void on its face, which purported to convey the plaintiff's lands, devised all his property to the defendant's grantor who executed a quitclaim deed of the plaintiff's land to the defendant. The defendant and his grantors paid taxes under the tax deed for twenty-seven years, and under the quitclaim deed for four years. In an action to cancel the quitclaim deed as a cloud on the plaintiff's title, *held,* two judges dissenting, that cancellation should have been decreed, for the owner of unoccupied land will not be barred by laches on account of failure to pay taxes unless such taxes have been paid by another under color of title. *Fletcher* v. *Malone* (Ark. 1920) 224 S. W. 629.

Where, as in the instant case, a deed void on its face is not a cloud, the owner would have no equitable rights against the holder thereof. Therefore, it cannot be said that the plaintiff was "sleeping on his rights". Furthermore, the mere failure of the true owner to pay taxes is not laches. *Costello* v. *Muheim* (1906) 9 Ariz. 422, 84 Pac. 906; *Bradley Lumber Co.* v. *Langford* (1913) 109 Ark. 594, 160 S. W. 866. There must be a material change in the condition or relation of the property or parties making the enforcement of equitable rights inequitable. *Galliher* v. *Cadwell* (1892) 145 U. S. 368, 12 Sup. Ct. 873; see *Keller* v. *Harrison* (1910) 151 Iowa 320, 128 N. W. 851. But even in jurisdictions where an instrument void on its face is a cloud, laches could destroy only the right to cancellation of the tax deed. Such a result would not alter the fact that the title to the property still remained in the plaintiff. Therefore, even if the right to cancellation of the tax deed had been lost by laches, nevertheless, the quitclaim deed was as much of a cloud as if the right to have the tax deed cancelled had never been lost. But where taxes on unoccupied land are paid under color of title, statutes often vest title in an adverse claimant who has paid them for the statutory period. *Towson* v. *Denson* (1905) 74 Ark. 302, 86 S. W. 661; *De Foresta* v. *Gast* (1894) 20 Colo. 307, 38 Pac. 244 (deed void on its face held "color of title"); *cf.* Wis. Stat. (1919) § 1189a; Ill. Ann. Stat. (J. & A. 1913) § 7202. In this event, since the claimant has legal title, he need not resort to the equitable doctrine of laches.

EVIDENCE—RAPE—BIRTH OF CHILD AS CORROBORATION.—In a trial for statutory rape, the court refused to charge for the defendant that the birth of a child was no evidence to corroborate the testimony of the prosecutrix that the defendant was the guilty party. On appeal, the conviction was affirmed without opinion, one judge dissenting. *People* v. *Whitson* (App. Div. 3rd Dept. 1921) 185 N. Y. Supp. 590.

Some states allow a conviction for statutory rape on the uncorroborated testimony of the prosecutrix. *State* v. *Hammontree* (Mo. 1915) 177 S. W. 367. But in New York, by Penal Law § 2013, and in many other jurisdictions by similar statutes, corroboration of the defiled female's evidence is necessary. Evidence of pregnancy is admissible because it proves intercourse, which is one of the constituent elements of the offense. *State* v. *Sysinger* (1910) 25 S. Dak. 110,